REMARKS

Status of the Claims

Claims 1-51 have been canceled and have been rewritten as new claims 52-102.

112 Rejections

Claims 1 and 3-7 have been rejected under 35 U.S.C. § 112, first paragraph, for non-enablement and 35 U.S.C. § 112, second paragraph, for indefiniteness. Specifically, the Examiner contends that the specification does not enable "authorized vending device." Although applicant disagrees with the Examiner's characterization since claim 1 clearly recites that the professional hair or beauty care provider is being authenticated, in order to expedite the prosecution of this application, applicant has canceled claims 1 and 3-7 and rewritten them as new claims 52-59 deleting the phrase "authorized vending device" objected to by the Examiner in favor of "accessed vending device." Accordingly, applicant respectfully requests that these rejections be withdrawn.

103 Rejection

Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-51 have been rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,163,010 to Klein et al. (hereinafter "Klein") in view of U.S. Patent No. 4,767,917 (hereinafter "Ushikubo"), U.S. Patent No. 7,099,740 to Bartholomew et al. (hereinafter "Bartholomew"), and U.S. Patent 5,960,411 to Hartman et al. (hereinafter "Hartman"). Claims 1, 3-8, 10-13, 15-20, 22-27, 29-34, 36-39, 41-46, and 48-5 have been canceled and replaced with new claims 52-102 without adding any new matter. Accordingly, Applicant respectfully traverses this rejection with respect to these new claims.

Contrary to the Examiner's assertion, none of the cited references teaches or suggests a central computer for remotely managing inventories of a plurality of vending

devices over a communications network, as required in pending claims 52-102 (and originally recited in canceled claims). The Examiner points to Klein for allegedly teaching the claimed central computer for remotely managing inventories of multiple vending devices. However, as shown in Fig. 1 of Klein, the computer 16 resides within the formulating device 10 (i.e., a vending device), and at best, the computer manages just the inventory of its associated formulating device. That is, applicant respectfully submits that the computer 16 is at best equivalent to the claimed processor of each vending device. Accordingly, contrary to the Examiner's assertion, Klein teaches away from the claimed invention because Klein requires that each formulating device locally manage its own inventory. Whereas, the claimed invention requires that a central computer remotely manage the inventories of multiple vending devices over the communications network.

To imbue one of ordinary skill in the art with knowledge of the present invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim of the insidious effect of hindsight syndrome, wherein that which only the inventor taught is used against the teacher." W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983). The prior must to be judged based on a full and fair consideration of what that art teaches, not by using Applicant's invention as a blueprint for gathering various bits and modifying the pieces in an attempt to reconstruct applicant's invention. The Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable.

In addition, the Examiner admits that Ushikubo describes "maintaining a list of goods which have been sold within the automatic vending machine." (*See* Office Action at 5). However, the claimed invention calls for the central computer to remotely manage the inventories of multiple vending devices by updating the inventory data maintained at the central computer for each vending device based on the transaction data received from each vending device over the communications network. That is, Ushikubo teaches away

from the claimed invention because the inventory data is locally maintained within each vending device. It is well settled that the Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable.

Further, Bartholomew merely describes compiling purchaser preference information in a database for real time analysis to evaluate demographic correlations and consumer color preference. (*See* col. 6, line 44 to col. 7, line 2 in Bartholomew cited by the Examiner). Whereas, the claimed invention calls for the central computer to receive transaction data from each vending device over the communications network when a purchase is made to update the inventory data maintained at the central computer for each vending device. The processor of each vending device generates and transmits the transaction data to the central computer when a purchase is made on the vending device. The central computer schedules delivery to each vending device based on the updated inventory data. That is, contrary to the Examiner's assertion, Bartholomew fails to teach or suggest receiving transaction data from each vending device when purchase is made, updating the inventory data of each vending device based on the received transaction data, and scheduling delivery to each vending device based on its updated inventory data. It is well settled that the Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable.

Furthermore, as with Ushikubo, Bartholomew teaches away from the claimed invention because the inventory data is maintained locally within each device. Whereas, the claimed invention requires that the central computer to remotely manage the inventories of multiple vending devices by updating the inventory data maintained at the central computer for each vending device based on the transaction data received from each vending device over the communications network. It is well settled that the

Examiner cannot simply change the principle of the operation of the reference or render the reference inoperable for its intended purpose to render the claims unpatentable.

Moreover, the Examiner's reliance on Hartman is incomprehensible because Hartman relates to an electronic marketplace. Hartman fails to teach or suggest the following claimed limitations missing from Klein, Ushikubo and Bartholomew. None of cited reference independently or in combination teach or suggest remotely managing the inventories of multiple vending devices by a central computer which maintains and updates inventory data of all of the multiple vending devices. As noted herein, Klein, Ushikubo and Bartholomew teach away from the claimed invention because they describe locally managing and/or maintaining the inventory data within each vending device. One of ordinary skill in the art would not equate remotely managing inventory of a plurality of vending devices with locally managing inventory within each vending device, as suggested by the Examiner.

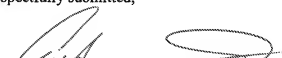
Of course, to establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on the Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. Here, the Examiner has failed to establish a *prima facie* case of obviousness because the combination of Klein, Ushikubo, Bartholomew and Hartman fails to teach or suggest all the claim limitations of the pending claims and the combination teaches away from the claimed invention.

In view of the above, Applicant believes that the pending application is in condition for allowance and requests that the Examiner's rejections be reconsidered and withdrawn.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. **NY-WELLA-204-US** (10207602) from which the undersigned is authorized to draw.

Dated: October 29, 2009

Respectfully submitted,



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